

2006-04

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UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION IX

IN THE MATTER OF:  
Stringfellow Acid Pits  
Superfund Site  
Glendale, California

State of California,  
Respondent

AGREEMENT FOR THE RECOVERY OF  
RESPONSE COSTS

CERCLA Docket No. 9-2006-0004

Proceeding Under Section 122(h) of the  
Comprehensive Environmental Response,  
Compensation, and Liability Act, as  
amended, 42 U.S.C. § 9622(h)

## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Agreement for the Recovery of Response Costs (the "Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the state of California, through its Department of Toxic Substances Control (the "State," or "Respondent").

2. This Agreement is entered into under the authority vested in the President of the United States by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Superfund Branch Chiefs pursuant to Regional Delegation 1290.20 (September 29, 1997).

3. This Agreement resolves issues arising under Superfund Cooperative Agreement 938001, originally denoted as CX810518-01-0, dated July 23, 1983, and as amended from time to time (the "SCA"), in relation to the Stringfellow Acid Pits Superfund Site, located near Glen Avon, in Riverside County, California (the "Site"). The intent of this Agreement is to resolve all issues arising under the SCA and close the accounting of the related grant. Among the issues resolved in this Agreement are authorized reimbursements to the State under the SCA, "Advance Match" reimbursement that may be authorized pursuant to Section 104(d)(1)(C), 42 U.S.C. § 9604(d)(1)(C), "State Share" obligations that may arise pursuant to Section 104(c)(3) of CERCLA, 42 U.S.C. § 9604(c)(3), and "SARA Credits" that may arise pursuant to Section 104(c)(5) of CERCLA, 42 U.S.C. § 9604(c)(3).

4. EPA and the State recognize that this Agreement has been negotiated in good faith and that neither the actions undertaken by the State in response at the Site nor in entering this Agreement shall constitute an admission of any fact, fault, legal issue or liability. EPA and the State agree to comply with and be bound by the terms of this Agreement and the parties further agree that they will not contest the basis or validity of this Agreement or its terms in proceedings to enforce this Agreement.

5. EPA has incurred response costs at or in connection with the Site. EPA has determined that the total past and projected response costs of the United States at or in connection with the Site exceed \$500,000, excluding interest.

## **II. PARTIES BOUND**

6. This Agreement shall be binding on EPA, and on the State, and any successors or assigns. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

### **III. DEFINITIONS**

7. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement, the following definitions shall apply:

a. "Agreement" shall mean this Agreement for the Recovery of Response Costs, EPA Docket No. CERCLA 9-2006-0004.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall be the effective date of this Agreement as provided in Section XVI.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

g. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral.

h. "Parties" shall mean EPA and the state of California.

j. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

### **IV. BACKGROUND**

8. The Site was a disposal facility for liquid industrial wastes that operated from 1956 to 1972. The wastes received at the Stringfellow Site were "Class I wastes," many of which now are listed as "hazardous substances" pursuant to CERCLA. Hazardous conditions from the Site prompted the State, in 1982, to propose the Site to be the first remedial site added to the federal National Priority List, which establishes national priorities for responses to environmental concerns.

9. Section 104(c)(3)(C) of CERCLA provides that the United States may not fund any remedial action for a Site unless the state in which the release occurs enters into a contract or cooperative agreement providing, among other conditions, assurances that the state will reimburse the United States for a statutory "State Share," which may be ten percent or fifty to one hundred percent, depending on whether the state operated the facility subject to the release. EPA and the State executed the SCA and its several amendments to provide federal funding toward

the necessary response actions at the Site. The SCA authorizes reimbursement to the State for costs incurred in performing necessary response actions identified in the SCA. The SCA also includes a provision for State Share reimbursement to the United States in accordance with Section 104(c)(3) of CERCLA.

10. In 1995, the United States District Court for the Central District of California made a factual finding that the State was an operator of the Site.

11. Section 104(d)(1)(C) authorizes states to receive "Advance Match" reimbursement for costs incurred for responses to hazardous substances between September 30, 1985, and October 17, 1986, the period during which CERCLA was suspended pending federal reauthorization, when those costs otherwise would have been the responsibility of the United States. The SCA includes a provision for the State to obtain Advance Match reimbursement.

12. Section 104(c)(5) of CERCLA provides that a state may earn credits when it incurs costs in a remedial action pursuant to a contract or cooperative agreement with EPA, and those costs are not reimbursed by the United States ("SARA Credit"). The SCA provides for the State to earn SARA Credit, which may be used to offset the State Share obligation at the Site, or potentially for remedial actions at other sites.

#### **V. RESOLUTION OF CLAIMS ARISING UNDER THE SCA**

13. To resolve all claims between the Parties arising under the SCA, and specifically to include State Share claims, SARA Credit claims, and reimbursement of authorized expenses and Advanced Match claims, the Parties resolve as follows:

a. Within sixty (60) days after the Effective Date of this Agreement, EPA will make available to the State the balance of obligated funds under the SCA, which EPA estimates to be approximately \$2,149,616.73.

b. EPA shall provide up to \$2,279,183.00 toward the remedial investigation, feasibility study and response activities for the perchlorate contamination at or from the Site. No more than semi-annually, the State shall submit a notice and invoice to EPA that includes a statement of the work performed, the dates of the work, the costs of such work, instructions of how EPA may direct the payment, and a certification by the State that the work subject to the invoice was conducted to the satisfaction of the State. Subject to EPA's determination that the work is reasonably related to the completion of a remedial investigation, feasibility study or response activity for perchlorate contamination at or from the Site, EPA shall pay the invoice within thirty (30) days of receiving the invoicing, and shall direct the payment in accordance with the directions of the State.

c. As of the Effective Date of this Agreement, the Final Determination Letter ("FDL") issued by EPA on July 29, 1991, is vacated, and all debt determined in that FDL is

cancelled. Additionally, as of the Effective Date of this Agreement, the State withdraws its request for review of the July 29, 1991 FDL.

## **VI. COVENANT NOT TO SUE BY EPA**

14. Except as specifically provided in Paragraph 15 and Section VII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against the State pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Response Costs against the State for Response Costs related to the Site that the EPA incurs after December 31, 2000, but not to exceed a value of \$4,776,892. In calculating costs toward this waiver, EPA shall not include the value of any payment obligation in Paragraph 13, which EPA additionally covenants not to sue or take administrative action against the State to recover pursuant to Section 107(a) of CERCLA.

15. Response Costs counted toward the waived costs in Paragraph 14 shall not include the following costs that may be incurred after the Effective Date: (a) costs incurred by the United States to enforce this Consent Decree against the State (including, but not limited to, the cost of all attorney time); costs incurred by the United States obtaining access to the Site; and, costs incurred by the United States conducting an emergency response at the Site in pursuant to Section 106(a) of CERCLA. EPA may seek these excluded costs from the State at any time.

16. The covenant in Paragraph 14 shall take effect immediately on the Effective Date of this Agreement. This covenant not to sue is conditioned on the satisfactory performance by the State of its obligations under this Agreement. This covenant not to sue extends only to the State and does not extend to any other person or entity.

## **VII. RESERVATIONS OF RIGHTS BY EPA**

17. EPA reserves, and this Agreement is without prejudice to, all rights against the State with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 14. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Respondent with respect to:

- a. liability for failure of the State to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the covenant not to sue stated in Paragraph 14;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

18. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

### **VIII. COVENANT NOT TO SUE BY THE STATE**

19. The State covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law;

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Response Costs; and

d. any claim, administrative or civil, to challenge or seek review of the SCA, any audit of the SCA, or any FDL related to the SCA or an audit of the SCA, whether under any provision of 40 C.F.R. Part 31 (Subpart F) or any other authority.

20. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

21. The State agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to the State with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

22. The waiver in Paragraph 21 shall not apply with respect to any defense, claim, or cause of action that the State may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against the State. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

#### **IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

23. Except as provided in Paragraph 21 (Non-Exempt De Micromis Waiver), nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. Except as otherwise provided by this Agreement, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

24. EPA and the State agree that this Agreement does not constitute an admission of any liability by the State. The State does not admit and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section IV of this Agreement.

25. The State agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. The State also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, the State shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

26. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief

relating to the Site, the State shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based on any contention that the claims raised in the subsequent proceeding were or should have been resolved through this Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VI.

## **X. ACCESS TO INFORMATION**

27. The State shall provide to EPA, on request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the response action. The State also shall make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the response action.

28. The State may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified the State that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to the State.

29. The State may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the State asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by the State. However, no documents, reports or other information created or generated pursuant to the requirements of this Agreement shall be withheld on the grounds that they are privileged.

30. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.



## **XI. FAILURE TO COMPLY WITH AGREEMENT**

### **31. Stipulated Penalty.**

a. If the State fails to comply with any obligation of this Agreement, including the access to information required in Section X of this Agreement, the State shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, \$500.00 per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the Site ID (09UP), and the EPA Docket Number for this action. The State shall send the check (and any accompanying letter) to:

EPA - Cincinnati Accounting Operations  
Attention: Region 9 Receivables  
P.O. Box 371099M  
Pittsburgh, PA 15251

c. At the time of each payment, the State also shall send notice that payment has been made to:

David Wood  
Superfund Accounting (PMD-6)  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified the State of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day the violation occurs and shall continue to accrue until the violation is cured. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

32. In addition to the stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of the State's failure to comply with the requirements of this Agreement, if the State fails or refuses to comply with the requirements of this Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, the State shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

33. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Payment of stipulated penalties shall not excuse Respondent from any other obligation required by this Agreement.

## **XII. RECORD RETENTION**

34. Until 5 years after the Effective Date, the State shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the response action or the liability of any person under CERCLA with respect to the Site, regardless of any retention policy to the contrary. The State also shall instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the response action consistent with this Paragraph.

35. At the conclusion of this document retention period, the State shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, on request by EPA, the State shall deliver any such records or documents to EPA. The State may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the State asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by the State. However, no documents, reports or other information created or generated pursuant to the requirements of this Agreement shall be withheld on the grounds that they are privileged.

36. The State hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

## **XIII NOTICES AND SUBMISSIONS**

37. Whenever, under the terms of this Agreement notice is required to be given or a document is required to be sent by one Party to another, such notice shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Excepting additional notices as may be required in Paragraph 31, written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and the State.

As to EPA:

Charnjit Bhullar  
EPA, Region IX (SFD-7)  
75 Hawthorne Street  
San Francisco, California 94105

As to the State:

Allen Wolfenden  
California Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, California 95812-0806

**XIV. INTEGRATION**

38. This Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

**XV. PUBLIC COMMENT**

39. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations that indicate that this Agreement is inappropriate, improper or inadequate.

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## **XVI. EFFECTIVE DATE**

40. The effective date of this Agreement shall be the date on which EPA issues written notice that the public comment period pursuant to Section XV has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

Each undersigned representative of the Parties is authorized to enter into the terms and conditions of this Agreement and to bind the parties to this document.

It is so ORDERED and Agreed this 10<sup>th</sup> day of April 2006.

BY: Elizabeth J. Adams  
Elizabeth J. Adams  
Branch Chief  
Site Cleanup Branch  
U.S. Environmental Protection Agency, Region 9

DATE: 4/10/2006

For the State of California:

By [Signature]

Title Superintendent of the Department of the State

Date 4/10/2006